

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

ROY MAYNOR

Plaintiff,

v.

THE DOW CHEMICAL COMPANY

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO.

3:07-CV-00504

COLLECTIVE ACTION

AGREED MOTION FOR CONTINUANCE

Plaintiffs and Defendant The Dow Chemical Company (“Dow”) file this Agreed Motion for Continuance, as authorized by the Federal Rules of Civil Procedure 16(b), and state:

A. INTRODUCTION

1. Plaintiffs have asserted claims alleging unpaid overtime against Defendant under the Fair Labor Standards Act. Specifically, Plaintiffs claim that they were not paid properly for the hours they spent in training and taking assessments. Plaintiff Ray Maynor also asserts a retaliation claim.

2. Pursuant to the Court’s Second Amended Scheduling Order dated February 26, 2009 (Docket No. 179), pretrial materials are due October 16, 2009 and docket call is scheduled for October 30, 2009 at 2:00 p.m.

3. The parties have agreed to mediate this case with Gloria Portela on October 20, 2009.

4. As a result, and in order to avoid the expenses associated with preparing pretrial materials and for trial, the parties request that the current Joint Pretrial Order and Motion in Limine deadline and docket call be extended by two weeks. Thus, the parties request that the

Joint Pretrial Order and Motions in Limine deadline be extended to October 30, 2009, and that the Court reschedule docket call to November 13, 2009.¹

B. ARGUMENT

5. The court can modify a scheduling order on showing of good cause. Fed. R. Civ. P. 16(b); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002); *Huval v. Offshore Pipelines, Inc.*, 86 F.3d 454, 458 (5th Cir. 1996). There is good cause to modify the current Scheduling Order because the parties have agreed to mediate this case. The parties will keep the Court apprised of the status of their mediation, and they will notify the Court if more time is necessary to fully explore a possible resolution.

6. The parties are agreed and jointly file this Motion, and no party will be prejudiced by the relief sought herein.

7. The parties have filed this Motion for Continuance as soon as they became aware of the need for extended deadlines.

8. This is the third motion to modify the Pretrial Motions deadline and docket call date.

9. This Motion is not sought solely for the purposes of delay, but so that justice may be served.

¹ The parties also note that they have filed several dispositive motions that will impact the trial of this matter.

C. CONCLUSION

10. For these reasons, the parties ask the Court to grant their Motion for Continuance, extend the deadlines in this case, and grant them any other relief to which they are entitled.

Respectfully submitted,

By: /s/ Mark S. Siurek (by permission)
Mark S. Siurek
State Bar No. 18447900
WARREN & SIUREK, L.L.P
3334 Richmond, Suite 100
Houston, Texas 77098
(713) 522-0066 Telephone
(713) 522-9977 Facsimile

By: /s/ Nancy L. Patterson
Nancy L. Patterson
State Bar No. 15603520
A. John Harper III
State Bar No. 24032392
MORGAN, LEWIS & BOCKIUS, LLP
Houston, Texas 77001
(713) 890-5000 Telephone
(713) 890-5001 Facsimile

CERTIFICATE OF SERVICE

I certify that on this 28th day of September, 2009, a true and correct copy of the foregoing was served upon the following parties via the Court's CM/ECF system:

Mark S. Siurek
WARREN & SIUREK, L.L.P
3355 W. Alabama, Suite 1010
Houston, Texas 77098

/s/ A. John Harper III
A. John Harper III